

REMARKS

After entry of the present amendment, claims 1-14 will be pending in the application. Claims 1, 5, 6, 12, 13 and 14 have been amended. Claims 15 through 23 have been withdrawn from consideration.

Claims Rejections – 35 U.S.C. §112

Claim 5 stands rejected under 35 U.S.C. §112, first and second paragraphs, as failing to comply with the written description requirement and being indefinite. The Applicant has amended the claim to render the Examiner's rejection moot.

In particular, the addition of the **handle** clarifies the means as originally claimed, the handle is described in the specification at paragraph 46, and thereby no additional new matter has been added.

Claim Rejections – 35 U.S.C. §102

Claims 1- 6 and 8 stand rejected as being anticipated by the United States Patent No. 2,539,412 to Faris (the Faris reference).

The Applicant has amended the independent claims 1 and 6 to more clearly define the invention as originally claimed by the Applicant. As amended, the independent claim 1 is now distinct over the Faris reference by identifying a lid having an adjustable height relative to a bottom surface within the container. In particular, claim 1, as amended now recites a **lid** having a pair of tabs slidably **engaged** in a first and second grooves **for varying the distance between the lid and the bottom surface**.

Claim 6 has been amended to further describe the **threads** defined by the sidewall on the **inside of the container**. The Faris reference does not identify an adjustable lid. In particular a lid that is adjustable and engaging with threads on the inside of the container.

The Faris reference fails to teach or suggest, either expressly or impliedly, the lid removably connected and capable of varying or changing the volume of space within the container relative to the distance between the lid and the bottom surface to varying the volume of the container. The Applicant feels that the amendment of the independent claims 1 and 6 have overcome the rejection over the Faris reference and thereby the rejection of the dependent claims 2-5 and 8 are moot

Claims 6, 9, 10 and 11 stand rejected as being anticipated by the United States Patent No. 5,992,673 to Hwang (the Hwang reference).

The Applicant has amended the independent claim 6 to further describe the **threads** defined by the sidewall on the **inside of the container** for adjusting a distance between the lid and the bottom surface of the container. The Hwang reference fails to teach or suggest, either expressly or impliedly, the lid removably connected and capable of varying or changing the volume of space within the container relative to the distance between the lid and the bottom surface to varying the volume of the container.

In addition, the Examiner's rejection to claim 11 referred to the Hwang reference and in particular to the leg (96) and the projection (102). However, the Applicant feels that the Examiner has respectfully mischaracterized the leg (96) and projection (102) in the Hwang reference. The projection (102) are not extending from the bottom surface into the inside of the container as in the subject invention. In addition, the plurality of legs (96) and projections (102) in the Hwang reference are for providing stability in stacking a plurality of the crates and it does not teach of the elevation of the crate off the ground to allow for draining of a fluid through the apertures on the bottom surface as in the subject application.

The Applicant feels that the amendment of the independent claim 6 has overcome the rejection over the Hwang reference and thereby the rejection of the dependent claims 9, 10 and 11 are moot

Claims 6, 7, 9 and 10 stand rejected as being anticipated by the United States Patent No. 913,532 to Miller (the Miller reference).

The Applicant has amended the independent claim 6 to further describe the

threads defined by the sidewall on the **inside of the container** for adjusting a distance between the lid and the bottom surface of the container.

The Miller reference does not disclose, teach or suggest the use of an adjustable lid for varying the space in the container. The Applicant believes that the subject invention as amended is patentably distinct and therefore allowable over the Miller reference. The Applicant has amended claim 6 and therefore believes the rejection of the dependent claims 7, 9 and 10 are moot.

Claims 6, 13 and 14 stand rejected as being anticipated by the United States Patent No. 6,056,143 to Stolzman (the Stolzman reference).

The Applicant has amended the independent claim 6 to further describe the **threads** defined by the sidewall on the **inside of the container** for adjusting a distance between the lid and the bottom surface of the container. The Stolzman reference does not disclose, teach or suggest the use of an adjustable lid for varying the space in the container. The Applicant believes that the subject invention as amended is patentably distinct and therefore allowable over the Stolzman reference.

The Applicant has amended claim 6 and therefore believes the rejection of the dependent claims 14 is moot. The Applicant has further amended claim 13 to be dependent of claim 12 therefore the Applicant believes the rejection of claim 13 as moot.

Claim Rejections – 35 U.S.C. §103

Claims 12 stands rejected as being anticipated by the United States Patent No.1,948,353 to Lagorio (the Lagorio reference) in view of United States Patent No. 750,632 to Fisher (the Fisher reference).

The Applicant is currently amending claim 12 to be a dependent claim of claim 1 and therefore the Applicant believes that this rejection is moot.

In view of the foregoing, the Applicant respectfully submits that claims 1 through 14 are non-obvious in view of the disclosure and teachings of the prior art. Therefore, it is respectfully submitted that the rejections have been overcome. Accordingly, independent

claims 1 and 6, as well as the claims that depend therefrom, are believed to be in condition for allowance.

Declaration

The applicant has submitted a re-executed declaration in compliance with 37 CFR 1.67(a) which acknowledges the duty to disclose to the Patent Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

If the Examiner believes that prosecution of the application can be expedited by way of an Examiner's amendment, the Examiner is invited to contact the Applicant's attorney at the telephone number listed below. If necessary, the Commissioner is authorized to charge Howard & Howard Attorneys, P.C. deposit account for any fees or credit any overpayment for this matter.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS, P.C.

September 17, 2007
Date

/Jeffrey A. Sadowski/
Jeffrey A. Sadowski, Registration No. 29,005
The Pinehurst Office Center, Suite #101
39400 Woodward Ave.
Bloomfield Hills, MI 48304-5151
(248) 723-0423